

1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF NEW JERSEY**

4
5 **IN RE: VALSARTAN PRODUCTS**
6 **LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-SAK

7 **TELEPHONIC STATUS**
8 **CONFERENCE**

9 Mitchell H. Cohen Building & U.S. Courthouse
10 4th & Cooper Streets
Camden, New Jersey 08101
April 29, 2022
Commencing at 10:04 a.m.

11 **B E F O R E:**

THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

13 **THOMAS I. VANASKIE (RET.)**
14 **SPECIAL MASTER**

15 **A P P E A R A N C E S:**

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24 Proceedings recorded by mechanical stenography; transcript
25 produced by computer-aided transcription.

A P P E A R A N C E S (Continued):

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Judicial Law Clerk to The Honorable Robert B. Kugler

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held telephonically before The Honorable
2 ROBERT B. KUGLER and The Honorable Thomas I. Vanaskie (Ret.),
3 Special Master, at 10:04 a.m.)

4 SPECIAL MASTER VANASKIE: Good morning.

5 MR. SLATER: Good morning, Your Honor.

6 SPECIAL MASTER VANASKIE: Shall we begin?

7 Okay. Who will be addressing the matters for the
8 defense in this call today?

9 MR. TRISCHLER: Judge, good morning. This is Clem
10 Trischler.

11 I think that it will depend on the issues. There may
12 be a few that I take on. There may be others that other folks
13 on the defense side handle, if that's okay with the Court.

14 SPECIAL MASTER VANASKIE: That's fine.

15 MS. MILLER: Yes, Your Honor. Jessica Miller. We
16 are dividing and conquering. Hopefully conquering, dividing.

17 SPECIAL MASTER VANASKIE: That silence there for a
18 while, I thought maybe Mr. Slater was going to have an easy
19 time of it today, but I guess not.

20 Why don't we first talk about the status update --
21 I'm looking at the plaintiffs' agenda letter now, the status
22 update on the meet and confers regarding defendants'
23 indemnification and defense agreements.

24 You're asking that the deadline for those to be
25 completed be extended to May 3rd, I take it, Mr. Slater?

1 MR. SLATER: Your Honor, you're referring to the
2 indemnification meet and confer? I think yes, that's correct.

3 SPECIAL MASTER VANASKIE: The indemnification and --

4 MR. SLATER: I think George Williamson was going to
5 handle this for us, but you are correct.

6 SPECIAL MASTER VANASKIE: All right. And is there
7 any objection on the defense side?

8 MR. COX: Your Honor, this is Chris Cox for the ZHP
9 defendants. I don't believe there's any objection on behalf
10 of the defendants.

11 SPECIAL MASTER VANASKIE: So we're clear on this, we
12 will issue an order that extends that deadline to May 3rd.

13 MR. SLATER: Thank you.

14 MR. COX: Thank you, Your Honor.

15 SPECIAL MASTER VANASKIE: Now, the next item on the
16 plaintiffs' -- we'll go back to the Dr. Najafi discovery issue
17 in a moment, but the other issue on the plaintiffs' agenda
18 letter is holding the clarification motions regarding general
19 causation in abeyance.

20 And I take it this is a matter for Judge Kugler?

21 MR. SLATER: Yes, Your Honor. This is Adam Slater.
22 I believe it is. This is something he had raised during our
23 last conference, so we thought we should report back to him.

24 SPECIAL MASTER VANASKIE: All right. And I believe
25 the next item would also be for Judge Kugler, that is, the

1 deadline for replies in support of Daubert motion regarding
2 class experts. Is that correct?

3 MR. SLATER: I think so, Your Honor, as well,
4 although we really do appreciate your helping us out the other
5 night. That was very kind of you.

6 SPECIAL MASTER VANASKIE: All right. So let's get
7 then to the status of the defendants' motion to compel testing
8 documents from Ron Najafi.

9 So who will be addressing this issue for the defense?

10 MR. TRISCHLER: Clem Trischler, Your Honor.

11 SPECIAL MASTER VANASKIE: Thank you, Mr. Trischler.

12 And Mr. Slater, will you be addressing this for the
13 plaintiffs?

14 MR. SLATER: I believe Daniel Nigh will, although I
15 may have something to say on it toward the end. But if
16 Mr. Nigh is on, the plan is for him to address it as the
17 primary spokesperson.

18 MR. NIGH: Yes, this is Daniel Nigh. I'm on. Thank
19 you.

20 SPECIAL MASTER VANASKIE: All right. So I would like
21 to hear any additional arguments you have with respect to the
22 matter.

23 I am not going to rule today during the conference
24 call on the matter but do commit to giving you an answer early
25 next week.

1 So having said that, Counsel --

2 (Court reporter clarification.)

3 SPECIAL MASTER VANASKIE: I was starting to say that
4 I recently served as a court-appointed mediator in a case in
5 which Mr. Trischler was involved. I just wanted everyone to
6 be aware of that, and just to let you know that I had
7 communications with Mr. Trischler as a mediator in a case
8 called Ruddy v. Polaris pending in the Middle District of
9 Pennsylvania.

10 And I don't know if you heard, Mr. Trischler, but I
11 believe the case has now been dissolved in its entirety.

12 MR. TRISCHLER: I did not hear that, Your Honor.
13 Thank you for the update. Glad to hear it.

14 SPECIAL MASTER VANASKIE: All right. So is there
15 additional argument you wanted then, Mr. Trischler, on this
16 motion to compel testing documents from Dr. Najafi?

17 MR. TRISCHLER: Thank you, Your Honor. I'm happy to
18 submit it on the briefs unless the Court has particular
19 questions or if the plaintiff is inclined to present argument
20 at this point. So I'll defer to the Court and to the
21 plaintiffs as to how they want to handle it. I think the
22 issues are fairly well spelled out in the briefs. But again,
23 I'll defer to the Court and plaintiffs.

24 SPECIAL MASTER VANASKIE: All right. Mr. Nigh,
25 anything additional you wanted to present?

1 MR. NIGH: Your Honor, I would agree as well. I
2 think the issues are pretty fleshed out in the briefings as
3 well.

4 SPECIAL MASTER VANASKIE: Very well. So we'll decide
5 the matter on the briefs. If I believe that I have -- if I
6 have questions after I finished reviewing the briefs, I will
7 schedule a call, but I don't anticipate that to be the case.
8 I anticipate deciding the matter on the papers that have been
9 submitted to me.

10 Is there anything else that we need to discuss before
11 bringing in Judge Kugler?

12 MR. SLATER: I don't think so from the plaintiffs,
13 Your Honor.

14 SPECIAL MASTER VANASKIE: All right. On the defense
15 side?

16 MR. TRISCHLER: Nothing that I'm aware of, Your
17 Honor.

18 SPECIAL MASTER VANASKIE: All right. Very well. So
19 I'm going to drop off the call, call Judge Kugler and rejoin
20 you all.

21 Thank you.

22 (Pause in proceedings.)

23 SPECIAL MASTER VANASKIE: Hello?

24 MR. SLATER: Hello, Judge. Yes?

25 SPECIAL MASTER VANASKIE: Yes, Mr. Slater, and do we

1 have -- I guess, we have 52 people on the call. And our court
2 reporter is there as well?

3 COURT REPORTER: I am, Your Honor. It's Ann Marie
4 Mitchell.

5 SPECIAL MASTER VANASKIE: Hi, Ann Marie. Thanks.

6 We're not able to reach Judge Kugler. I've called
7 him -- we were instructed to call his cell phone, and it
8 immediately goes to voicemail. And I texted him, but I
9 haven't heard back.

10 So what I would like to suggest is that the call be
11 rescheduled for sometime later today. I cannot give you a
12 time because that's depending upon Judge Kugler's schedule.
13 But a text order will be issued informing you about the
14 resumption of the call. I know that's a bit inconvenient, but
15 I don't have any other solution right now.

16 MS. GOLDENBERG: Judge, this is Marlene Goldenberg on
17 behalf of plaintiffs.

18 I'm aware that there are some plaintiffs' counsel who
19 have cases that are potentially set for dismissal and who I
20 think had wanted to address those issues. In the interest
21 of making sure that those attorneys all get notice of the
22 hearing, would it be possible just to move the plaintiff fact
23 sheet discussion and the show cause orders to the next case
24 management conference?

25 SPECIAL MASTER VANASKIE: I think that's a sound

1 solution to the issue of those who are in jeopardy of having
2 their cases dismissed so that they could be heard. And we do
3 have that next conference call scheduled.

4 So let's move the discussion of the potential
5 dismissal, the show cause orders with respect to those
6 plaintiffs to the next case management conference.

7 MS. GOLDENBERG: I appreciate it. Thank you, Your
8 Honor.

9 SPECIAL MASTER VANASKIE: And we'll issue an order to
10 that effect.

11 All right. So subject to us hearing from Judge
12 Kugler to resume the call to address the particular issues
13 that he needs to decide, we'll just end the call for now and
14 keep an eye open for a text order. And the order --

15 Maybe that's Judge Kugler joining?

16 No, I guess not.

17 All right. So look for a text order.

18 Thank you all very much, and we'll see you at the
19 next conference.

20 MR. SLATER: Thank you, Your Honor.

21 MR. TRISCHLER: Thank you.

22 (Proceedings adjourned at 10:32 a.m.)

23 (Proceedings resumed at 11:01 a.m.)

24 THE COURT: Hello. This is Judge Kugler.

25 MR. SLATER: Good morning, Your Honor.

1 THE COURT: Hey, I'm sorry about the screw-up. Judge
2 Vanaskie tried desperately to get ahold of me. I never got
3 the call or text messages. I cannot explain what happened.
4 But anyway, hopefully we're all together now, I hope.

5 I heard Mr. Slater.

6 Who do we have for the defendants, anybody know?

7 Maybe they're tuning in now.

8 SPECIAL MASTER VANASKIE: And I'm on, Judge Kugler.
9 Tom Vanaskie is on too.

10 THE COURT: Hi, Tom.

11 Is Ms. Miller there? Is she on yet? Apparently not.

12 MR. HARKINS: This is Steve Harkins with Greenberg
13 Traurig. I believe Ms. Miller has a conflict at 11:00, so I
14 don't know if she's going to be able to join the call.

15 THE COURT: Okay. Are you going to be able to talk
16 about the orders to show cause, Mr. Harkins?

17 MR. HARKINS: Yes, Your Honor. I will be handling
18 that, and either myself or someone from my team will be
19 handling the updated reply brief deadlines and that schedule
20 as well.

21 THE COURT: Well, the updated reply brief deadlines,
22 you both seem to agree on the dates, and that's fine. I'm
23 sorry that got screwed up a little bit. But we'll enter a new
24 order with those dates. Okay?

25 MR. HARKINS: Thank you, Your Honor.

1 MS. GOLDENBERG: Your Honor, this is Marlene
2 Goldenberg on behalf of the plaintiffs.

3 We had spoken with Judge Vanaskie at the end of the
4 prior conference. And because of the confusion on timing,
5 Judge Vanaskie had indicated that we might push the show cause
6 orders to next month's conference, because attorneys that
7 might have been around, we weren't sure if they would be able
8 to stay on this call if their cases were subject to dismissal.

9 THE COURT: Well, we know that the first three on the
10 order to show cause, the defendants said that they can be
11 withdrawn. That's the William Byrnes, Estate of Sloan
12 Mitchell and Kelly Donaldson matters.

13 Correct, Mr. Harkins?

14 MR. HARKINS: Yes, Your Honor, that's correct for
15 those three. And in the Mills, Larsen and Thompson matters,
16 we'd like to continue those for one month. I believe we'll
17 hopefully be able to resolve them by that time.

18 So that just leaves the Thorn, Harris and Wilson
19 matters. I don't know if counsel representing those three
20 plaintiffs are available, but those would be the only three
21 that we would be requesting dismissal on at this time.

22 THE COURT: Let's ask.

23 Is anybody on the phone able to talk about Jimmie
24 Thorn or Deborah Harris or Chadwick Wilson?

25 (No response.)

1 THE COURT: Apparently not. Why don't we -- let's
2 just relist those in May, because we got the call all screwed
3 up today. It's our fault. We'll list the Jimmie Thorn,
4 Deborah Harris and Chadwick Wilson matters then again for May.
5 And who knows, maybe they'll get resolved by then.

6 But you also have six that you want to move to the
7 orders to show cause in May. Any updates on those?

8 MR. TRISCHLER: Yes, Your Honor. There are two
9 updates. In the case number one, Michael Keicher, and case
10 number three, Carl Huston, the parties are close to resolving
11 those, so we're not requesting orders to show cause at this
12 time in those two matters.

13 It would be the remaining four, Sanford, Payne, Hall
14 and Dennis, where we would request orders to show cause at
15 this time.

16 Again, I don't know if plaintiffs' counsel for any of
17 those four are available to address them now.

18 THE COURT: Well, nothing is going to happen to them
19 other than to relist them in May for an order to show cause.
20 So whoever is involved in those, if they have any objections,
21 we can raise them at the next conference.

22 So we'll list Sanford; Payne, P-A-Y-N-E; Hall; and
23 Dennis for an order to show cause returnable at the May
24 conference.

25 And then you have 18 of them you want to relist for a

1 second time. Correct?

2 MR. TRISCHLER: That's correct, Your Honor. And I
3 have no updates on any of those 18 cases.

4 THE COURT: Okay. So we'll shift the Williams;
5 Benton; Pace, P-A-C-E; McDermott; Shemes, S-H-E-M-E-S; McCall;
6 Powell; Shapiro; Estate of Badger; Richards; Callahan; Tolley,
7 T-O-L-L-E-Y; Peyton, P-E-Y-T-O-N; Tippet; Dais, D-A-I-S;
8 Grubb; Gallagher; and Jackson will be listed again for May.

9 Okay. I think that takes care of the orders to show
10 cause.

11 I also saw that both sides addressed the still
12 outstanding issue of defendants' motion for clarification on
13 certain rulings on the Daubert hearings, but apparently both
14 sides want to keep talking and they don't want to resolve it
15 at this time; is that correct?

16 MR. SLATER: Your Honor, for the plaintiffs, we spoke
17 with the defendants. Our preference, in line with what Your
18 Honor suggested, was to hold this until this became a
19 necessary issue in pretrial briefing. Defense counsel advised
20 us that they feel that this issue needs to be resolved before
21 they file Rule 56 dispositive motions, and we said that we
22 would agree to that. And then defense counsel said they're
23 still trying to work through whether they have a consent piece
24 for that.

25 So from the plaintiffs' perspective, we're happy to

1 keep discussing, but we are agreeable to what had been floated
2 during the discussion. And we also thought it was probably
3 not a bad idea to let Your Honor know where we were and what
4 was being discussed.

5 THE COURT: Well, that's fine. I mean, keep working
6 on it, because we're not on the cusp of filing Rule 56 motions
7 anyway, but maybe -- maybe at the late May conference we can
8 talk about Rule 56 motions and what your contemplations are.

9 Now, I understand that the motions are going to be
10 based on the lack of an expert report as to certain claims,
11 that's fine. But I'd also like to know if the defense is
12 contemplating or even if the plaintiffs are contemplating any
13 other kind of Rule 56 motions. And let's talk about that in
14 May. Okay?

15 MR. SLATER: That sounds great, Judge.

16 THE COURT: Anything else?

17 Again, I'm sorry that this thing got screwed up this
18 morning. It's not your fault, something got wrong with the
19 phone systems and all that. I never got the messages.

20 So anything else we want to talk about?

21 MR. SLATER: I don't think anything for the
22 plaintiffs, Your Honor.

23 THE COURT: Well, maybe up here in the Northeast we
24 can get some spring weather. It's been cold, unbelievably
25 cold, but what are you going to do? What I'm afraid of is

1 what usually happens in these things is that two weeks from
2 now it will turn 90 degrees and it'll be summer and we'll have
3 no spring.

4 But anyhow, enjoy the spring, and we'll talk to you
5 all in May. Thank you. Take care.

6 (Proceedings concluded at 11:08 a.m.)

7 - - -

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

10

11 /S/ Ann Marie Mitchell, CCR, CRR, RDR, RMR
12 Court Reporter/Transcriber

13 29th day of April, 2022
14 Date

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